

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE

CIARA NEWTON, )  
 )  
 PLAINTIFF, ) NO. C-17-3961 YGR  
 )  
 VS. ) TUESDAY, DECEMBER 18, 2018  
 )  
 EQUILON ENTERPRISES LLC DBA ) OAKLAND, CALIFORNIA  
 SHELL OIL PRODUCTS, )  
 )  
 ) JURY TRIAL  
 DEFENDANT. )  
 )

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**FOR PLAINTIFF:** MINNIS & SMALLETS LLP  
369 PINE STREET, SUITE 500  
SAN FRANCISCO, CALIFORNIA 94104  
BY: SONYA L. SMALLETS, ESQUIRE  
EVEN R. ETHINGHOFF, ESQUIRE

DICKSON GEESMAN LLP  
1999 HARRISON STREET, SUITE 1945  
OAKLAND, CALIFORNIA 94612  
BY: EMILY A. NUGENT, ESQUIRE

**FOR DEFENDANT:** LAFAYETTE & KUMAGAI LLP  
1300 CLAY STREET, SUITE 810  
OAKLAND, CALIFORNIA 94612  
BY: GARY T. LAFAYETTE, ESQUIRE  
BARBARA L. LYONS, ESQUIRE

**REPORTED BY:** DIANE E. SKILLMAN, CSR 4909, RPR, FCRR  
OFFICIAL COURT REPORTER

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 TUESDAY, DECEMBER 18, 2018

3:14 P.M.

## 2 P R O C E E D I N G S

3 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

4 **THE COURT:** ALL RIGHT. LET'S CALL THE CASE.5 **THE CLERK:** CALLING CIVIL CASE 17-3961 YGR NEWTON  
6 VERSUS EQUILON ENTERPRISES, LLC.7 **THE COURT:** THE RECORD WILL REFLECT I HAVE COUNSEL  
8 FOR THE PLAINTIFF, AND THE PLAINTIFF IS HERE AS WELL,  
9 MS. NUGENT, MS. SMALLETS, AND MR. ETTINGHOFF.

10 AND FOR THE DEFENSE I HAVE MR. LAFAYETTE AND MS. LYONS.

11 I HAVE SHARED WITH ALL OF YOU TWO QUESTIONS THAT CAME IN  
12 FROM THE JURY. WE RECEIVED THEM AT THE SAME TIME EVEN THOUGH  
13 THEIR NOTES HAVE DIFFERENT TIME NOTATIONS, AND WE CONTACTED  
14 YOU AS SOON AS THEY WERE RECEIVED.15 SO, THEY WANT YOU TO ANSWER QUESTIONS ABOUT THE EVIDENCE.  
16 NOT QUITE YOUR JOB, IN MY VIEW, BUT DO YOU HAVE ANY COMMENTS?17 DO YOU WANT ME TO GIVE YOU THREE MINUTES APIECE TO ARGUE  
18 TO THEM, OR WHAT DO YOU WANT TO DO?

19 MS. NUGENT.

20 **MS. NUGENT:** I DON'T THINK WE -- WE COULD ARGUE TO  
21 THEM, BUT I DON'T THINK IT'S NECESSARY. I'LL LOOK AT THE ONE  
22 THAT IS AT 2:07 P.M., THE FIRST ONE.23 IN OUR VIEW THERE'S JUST EXHIBIT 26 FOR THEM TO LOOK AT.  
24 AND FOR THE ONE AT 2:25 P.M., THERE IS NO EXHIBIT IN EVIDENCE  
25 THAT SHOWS A THIRD DOCUMENTED TARDY.

1                   **THE COURT:** MR. LAFAYETTE.

2                   **MR. LAFAYETTE:** WITH REGARD TO THE FIRST ONE, WHICH  
3 I'M REFERRING TO AS THE 2:07, I THINK WE COULD ARGUE TO THEM  
4 ABOUT THE 10.5 AND THE 12 HOURS BECAUSE I THINK, IF MY  
5 RECOLLECTION IS RIGHT, THE TESTIMONY IS SHE DIDN'T WORK THE  
6 FULL TWO SHIFTS THAT SHE WAS SUPPOSED TO WORK, AND SHE ONLY  
7 WORKED 10.5 HOURS OF THAT SHIFT.

8                   **MS. NUGENT:** THAT IS NOT TRUE AND THAT IS NOT WHAT  
9 THE TESTIMONY SHOWED. AND IN ORDER TO GO BACK, IF HE WANTS TO  
10 ARGUE, THAT WOULD BE PUTTING IN TESTIMONY BECAUSE --

11                  **MR. LAFAYETTE:** I -- I AM SORRY. I APOLOGIZE.

12                  **MS. NUGENT:** -- BECAUSE THERE WERE TWO DAYS THAT SHE  
13 MADE UP. ONE IS APRIL 9TH OF FIRE TRAINING. THAT WAS A FULL  
14 DAY. SHE WAS TOLD NOT TO SIGN IN BECAUSE SHE WAS NOT PAID FOR  
15 THAT DAY.

16                  AND THE SECOND ONE IS THIS DATE OF... REFERENCED IN  
17 EXHIBIT 26, THE 7/25 EMAIL. AND THERE IS NO EVIDENCE THAT SHE  
18 ONLY WORKED TEN AND A HALF HOURS. THERE IS NO EVIDENCE THAT  
19 SHE DIDN'T MAKE UP THE TIME. UNLESS WE WANT TO REOPEN THE  
20 RECORD AND HAVE PEOPLE COME BACK, OTHERWISE THEY HAVE  
21 EXHIBIT 26 TO GO ON.

22                  **MR. LAFAYETTE:** IF I MAY, YOUR HONOR?

23                  I'M NOT TALKING ABOUT RE-OPENING THE RECORD AT ALL. I'M  
24 SIMPLY SAYING THAT I THINK WHAT I HEARD WAS MR. CAMERON CURRAN  
25 ANSWERING A QUESTION THAT I ASKED WHICH WAS DID SHE MAKE UP

1 ALL THE TIME. AND I THINK I ASKED THAT OF MR. PEREZ. THAT'S  
2 WHAT I AM REFERRING TO.

3 **THE COURT:** WELL, YOU ARE WELCOME TO LOOK AT THE  
4 TRANSCRIPTS.

5 **MR. LAFAYETTE:** I WILL LOOK FOR THAT, YOUR HONOR.

6 **THE COURT:** AND THEY HAVE BEEN INSTRUCTED THAT IT MAY  
7 TAKE AWHILE, SO....

8 **MR. LAFAYETTE:** GIVE ME A COUPLE OF SECONDS, YOUR  
9 HONOR.

10 **THE COURT:** OKAY.

11 WE ARE GOING TO STAND IN RECESS. WHEN YOU'RE READY FOR  
12 ME, LET MY COURTROOM DEPUTY KNOW AND WE WILL COME BACK OUT.

13 (RECESS TAKEN AT 3:20 P.M.; RESUMED AT 3:38 P.M.)

14 **THE CLERK:** REMAIN SEATED. COME TO ORDER. THIS  
15 COURT IS BACK IN SESSION.

16 **THE COURT:** OKAY. WE'RE BACK ON THE RECORD. WHO  
17 WOULD LIKE TO START, MR. LAFAYETTE?

18 **MR. LAFAYETTE:** I'LL START, YOUR HONOR.

19 WITH REGARD TO QUESTION NO. -- THE 2:25 QUESTION.

20 **THE COURT:** RIGHT.

21 **MR. LAFAYETTE:** AS RELATES TO THE 9/21 EMAIL, IT IS  
22 BEING TARDY MORE THAN THREE TIMES. I WOULD DIRECT ATTENTION  
23 TO EXHIBITS 554 AT 110, EXHIBIT 563, EXHIBITS 566 AT 1007 AND  
24 1008.

25 **THE COURT:** HOLD ON.

1 (PAUSE IN THE PROCEEDINGS.)

2 ALL RIGHT.

3 **MR. LAFAYETTE:** EXHIBITS 574 AT 2097.

4 AND THERE IS ONE MORE THAT I WAS PULLING UP, YOUR HONOR,  
5 IF I COULD.

6 (PAUSE IN THE PROCEEDINGS.)

7 AND EXHIBIT 514.

8 AS TO THE SECOND ISSUE ASKING ABOUT WHETHER OR NOT SHE  
9 WORKED A COMPLETE SHIFT, THERE'S TESTIMONY RELATING TO  
10 DOCUMENTS WHERE THE REFERENCE WAS THAT --

11 **THE COURT:** CAN YOU JUST GIVE ME --

12 **MR. LAFAYETTE:** THE TRANSCRIPT CITE?

13 **THE COURT:** UH-HUH, BECAUSE -- HAVE YOU NOT SHARED  
14 THIS INFORMATION?

15 **MS. NUGENT:** NO. I WAS HOPING TO, BUT WE HADN'T.

16 **THE COURT:** SO GIVE ME THE TRANSCRIPT REFERENCES.

17 **MR. LAFAYETTE:** PAGE 974. THIS IS VOLUME 5, 974, 11  
18 THROUGH 24 AND 976, 7 THROUGH 9.

19 **THE COURT:** DO YOU WANT A MINUTE TO DIGEST?

20 **MS. NUGENT:** YES, PLEASE.

21 (PAUSE IN THE PROCEEDINGS.)

22 **MS. NUGENT:** I'M READY TO ADDRESS THE 2:07.

23 **THE COURT:** SO MY QUESTION IS, I TAKE IT FROM THE  
24 DEFENSE THAT THEY WOULD LIKE ME TO DIRECT THE JURY'S ATTENTION  
25 TO THOSE EXHIBITS THAT THEY HAVE IDENTIFIED IN ADDITION TO

1 EXHIBIT 26 WHICH YOU IDENTIFIED AS THE PRIMARY ONE.

2 **MR. LAFAYETTE:** YES. AND BY THE QUESTION, YOUR  
3 HONOR, I THINK THAT THERE IS SOME CONFUSION HERE.

4 THE EXHIBIT -- I'LL EXPLAIN WHY AND -- THAT'S ALL.

5 I THINK WHEN THEY ARE REFERRING TO EXHIBIT 26, THAT'S A  
6 DISCUSSION ABOUT NOT DOCKING HER FOR THE 15 MINUTES SHE'S LATE  
7 ON THE 22ND. THAT'S NOT RELATED TO THE SWAPPING OF SHIFTS.  
8 THAT'S WHAT I AM REALLY TRYING TO GET TO.

9 **THE COURT:** ALL RIGHT. MS. NUGENT.

10 **MS. NUGENT:** SO ON THE 2:07 ASKING ABOUT ANY EXHIBIT  
11 OR TESTIMONY ABOUT AGREEMENT BETWEEN THE PARTIES THAT CONFIRMS  
12 IF WHAT MR. CURRAN WROTE IS THE MISSING ONE AND A HALF HOURS,  
13 I'LL SHOW YOU -- I'LL TELL YOU FIRST THE TESTIMONY THAT WE  
14 THINK BEARS UPON THAT.

15 481, LINE 14 THROUGH 482, LINE 25 --

16 **THE COURT:** 481, LINE --

17 **MS. NUGENT:** 14 THROUGH 482, LINE 25. 126 --

18 **THE COURT:** THAT'S TESTIMONY?

19 **MS. NUGENT:** THAT'S TESTIMONY. THIS WILL ALL BE  
20 TESTIMONY.

21 **THE COURT:** OKAY.

22 **MS. NUGENT:** PAGE 126, LINE 17 THROUGH 22. AND THEN  
23 PAGE 1058, LINE 24 THROUGH 1059, LINE 6.

24 I HAVE TAKEN A QUICK LOOK AT THE TWO PIECES OF TESTIMONY  
25 THAT SHELL'S COUNSEL POINTS TO. ONE OF THEM IS NOT RELEVANT

1       ON THIS POINT, THE 974, 11 TO 24. AND OTHER THAN THE  
2 EXHIBIT 26, THERE IS NO OTHER EXHIBIT ABOUT THIS POINT.

3           **THE COURT:** SO MY QUESTION IS, DO YOU WANT ME TO  
4 PROVIDE EVIDENCE OR NOT?

5           **MS. NUGENT:** NO, I DON'T THINK SO. I DON'T THINK FOR  
6 EITHER ONE OF THESE THERE IS ANYTHING WE CAN POINT THEM TO.

7           WHEN I LOOK AT THE 2:25 QUESTION, I THINK --

8           **THE COURT:** WELL, WHAT IS -- IF YOU DON'T WANT ME TO  
9 POINT THEM TO EVIDENCE, WHAT DO YOU WANT ME TO TELL THEM?

10           **MS. NUGENT:** FOR THE 2:25 QUESTION, THERE IS NO THIRD  
11 DOCUMENTED TARDY. I MEAN, I READ THIS AS NOT NEARLY AS  
12 BROADLY AS SHELL READS IT, AND THAT THERE'S -- THE PD LOG IS  
13 IT.

14           THEY ARE ASKING ABOUT DOCUMENTED TARDIES. THEY ARE  
15 POINTING TO THE PD LOG. THAT'S IT, EXHIBIT 83.

16           **THE COURT:** WHAT DO YOU WANT ME TO RESPOND TO THE  
17 NOTE FOR 2:07?

18           **MS. NUGENT:** FOR 2:07, IF WE ARE GOING TO -- SAME  
19 THING. I THINK FOR 2:07 THERE IS SOME TRANSCRIPT TESTIMONY.  
20 IF YOU CAN -- WE PROVIDED THREE CITES, AND SHELL HAS PROVIDED  
21 TWO. IF YOU WANT TO LOOK AT THOSE, I THINK ONE OF THE CITES  
22 THAT THEY PROVIDED IS NOT RELEVANT, BUT IT SEEMS LIKE MAYBE  
23 REFRESHING THEM ON THOSE FOUR PIECES OF TESTIMONY MAY HELP  
24 THEM ON THAT 2:07 QUESTION.

25           I DON'T THINK IT'S GOING TO ULTIMATELY ANSWER THE QUESTION

1 FOR THEM. THERE ARE SOME TESTIMONIAL DISPUTES, BUT AT LEAST  
2 THEY WILL HAVE THAT.

3 **THE COURT:** YOUR RESPONSE ON THE EXHIBITS THAT HAVE  
4 BEEN IDENTIFIED?

5 **MS. NUGENT:** FOR THE 2:25 QUESTION, THOSE ARE NOT  
6 DOCUMENTED TARDIES. I DON'T THINK THAT THAT'S APPROPRIATE.

7 I'M STILL TRYING TO FIGURE OUT IF 514 IS IN THE RECORD.  
8 OKAY, IT IS IN THE RECORD.

9 **MR. LAFAYETTE:** I HAVE A SUGGESTION, YOUR HONOR.

10 **THE COURT:** OKAY.

11 **MR. LAFAYETTE:** WITH REGARD TO THE 2:07, THAT WE  
12 SIMPLY TELL THEM THAT THEY HAVE ALL OF THE INFORMATION THAT'S  
13 AVAILABLE. AND LET THEM DO THAT.

14 WITH REGARD TO THE --

15 **THE COURT:** HOLD ON. THE SUGGESTION IS FOR ME TO  
16 SEND A NOTE BACK TO THE JURY THAT THEY HAVE ALL THE  
17 INFORMATION THAT IS AVAILABLE?

18 **MR. LAFAYETTE:** YES.

19 **THE COURT:** IS THERE AN OBJECTION TO THAT RESPONSE?

20 **MS. NUGENT:** FOR 2:07?

21 **THE COURT:** CORRECT.

22 **MS. NUGENT:** I THINK WE SHOULD SHOW THEM THE PIECES  
23 OF TESTIMONY.

24 **THE COURT:** ALL RIGHT. HOLD ON.

25 WHAT VOLUME IS THAT?

1                   **MS. NUGENT:** THE 126, 17 THROUGH 22, THAT WAS  
2 VOLUME 1. I HAVE A COPY RIGHT HERE, YOUR HONOR.

3                   **THE COURT:** I HAVE IT.

4                   ALL RIGHT. 126 AT 17 TO 22 SAYS -- THIS IS MS. SMALLETS  
5 WHO IS QUESTIONING....

6                   **MS. NUGENT:** ERIC PEREZ.

7                   **THE COURT:** MR. PEREZ.

8                   "QUESTION: ON JULY 25TH MR. CURRAN TOLD YOU THAT

9                   MS. NEWTON CAME IN ON THURSDAY TO MAKE UP THE REST OF  
10 THE TIME SHE SWAPPED WITH HERSELF, CORRECT?

11                   "YOU LOOK AT THE EMAIL THAT HE SENT TO YOU?

12                   "YES, THAT'S CORRECT."

13                   IS THERE AN OBJECTION? THIS RELATES TO EXHIBIT 26.

14                   IS THERE AN OBJECTION.

15                   **MR. LAFAYETTE:** THERE IS NO OBJECTION. I THINK  
16 EXHIBIT 26 IS IN EVIDENCE.

17                   **THE COURT:** THE QUESTION FROM THE JURY IS: IS THERE  
18 AN EXHIBIT OR ANY TESTIMONY OR AN AGREEMENT BETWEEN THE  
19 PARTIES THAT CONFIRMS IF THE TIME CURRAN WRITES ABOUT ON 9/25,  
20 WHICH IS PLAINTIFF'S EXHIBIT 26, IS THE MISSING HOUR AND A  
21 HALF LAYNE REFERENCES ON 9/29 -- 9/21?

22                   **MR. LAFAYETTE:** I GUESS THE ONLY THING THAT I HAVE A  
23 CONCERN ABOUT, AND I COULD BE MISTAKEN, BUT I THOUGHT WE'D  
24 INDICATED AT THE OPENING OF THE TRIAL THAT THEY WOULD NOT BE  
25 GETTING THE TRANSCRIPTS.

3                   **MR. LAFAYETTE:** AND THAT -- THAT'S MY ONLY CONCERN  
4                   ABOUT THAT.

5                   **THE COURT:** THERE IS AN INSTRUCTION THAT I GIVE THEM  
6                   IF I READ IT BACK, BUT THEY DON'T GET THE TRANSCRIPT. I WOULD  
7                   HAVE TO BRING THEM OUT HERE TO READ IT TO 'EM.

ALL RIGHT. THE NEXT REQUEST IS PAGE 481 --

9 MS. NUGENT: THAT'S IN VOLUME 3.

12 (PAUSE IN THE PROCEEDINGS.)

13 THIS IS MS. SMALLETS WITH THE DIRECT OF MS. NEWTON.

14 MS. NUGENT: THAT'S CORRECT.

16 MS. NUGENT: YES. VOLUME 6.

19 MS. NUGENT: THAT'S RIGHT.

20 (PAUSE IN THE PROCEEDINGS.)

23 MR. LAFAYETTE: YES, YOUR HONOR.

24 THERE'S NOTHING IN THOSE DESIGNATIONS THAT CONFIRMS THAT  
25 THAT IS THE DIFFERENCE -- THE HOURS THAT MS. LAYNE IS WRITING

1       ABOUT. THOSE WRITINGS ONLY CONFIRM -- THOSE READINGS ONLY  
2       CONFIRM WHAT'S IN THAT ACTUAL EMAIL. THEY DON'T CONFIRM THAT  
3       THAT'S WHAT MS. LAYNE IS WRITING ABOUT.

4           AND THAT'S THE -- THAT'S WHY I SAY WE SHOULD JUST TELL  
5       THEM THAT THEY HAVE WHAT THEY HAVE.

6           **THE COURT:** WHAT ARE YOU SAYING WHAT IS THAT IF NOT  
7       THOSE DAYS?

8           **MR. LAFAYETTE:** I DON'T KNOW. AND I AM BEING -- I  
9       DON'T. I JUST KNOW THAT WHAT WE ARE NOW DOING IS SIMPLY  
10       DOUBLING DOWN ON WHAT'S IN THE EMAIL ITSELF.

11           AND TO THE EXTENT THAT THEY ARE ASKING IF THERE'S  
12       SOMETHING THAT CONFIRMS THAT'S WHAT SHE'S TALKING ABOUT,  
13       THAT'S NOT WHAT THE TESTIMONY --

14           **THE COURT:** I DON'T HAVE TO -- SO I DON'T HAVE TO SAY  
15       THAT IT CONFIRMS.

16           **MR. LAFAYETTE:** BUT -- IF WE PROVIDED IN RESPONSE TO  
17       THE QUESTION THAT'S ULTIMATELY WHAT IT'S DOING. AND THAT'S  
18       WHY I SAY WE SHOULD JUST TELL THEM THAT THEY HAVE ALL THE  
19       EVIDENCE THAT THERE IS.

20           **THE COURT:** IS THERE ANY REFERENCE IN ANY OF THE  
21       DOCUMENTS ABOUT 10.5 HOURS OTHER THAN IN 599?

22           **MR. LAFAYETTE:** I DON'T THINK THERE ARE, YOUR HONOR.

23           **MS. NUGENT:** ABOUT 10.5 HOURS?

24           **THE COURT:** CORRECT. IS THERE ANY DOCUMENT ANYWHERE  
25       THAT TALKS ABOUT THAT?

**MS. NUGENT:** NOT 10.5 HOURS, NO.

MR. LAFAYETTE: NO.

**THE COURT:** IS THERE ANY DOCUMENT ANYWHERE THAT TALKS ABOUT THE DELTA OF 1.5 HOURS?

MS. NUGENT: EXHIBIT 26. IT DOESN'T REFERENCE THE  
DELTA --

**THE COURT:** IT DOESN'T SAY THE DELTA.

**MS. NUGENT:** IT DOESN'T REFERENCE IT, BUT THAT'S THE ONLY ONE THAT IS REFERRING TO WHETHER THERE WAS -- WHETHER SHE MADE UP ALL THE TIME OR NOT. THAT AND THIS TESTIMONY.

I MEAN, THE ISSUE IS THAT THERE WAS NOT ONE AND A HALF HOURS LEFT.

**THE COURT:** I UNDERSTAND THAT'S YOUR PERSPECTIVE.

**MS. NUGENT:** YES.

**THE COURT:** I DON'T KNOW THAT THAT'S A FACT. THAT'S FOR THE JURY TO DECIDE.

**MS. NUGENT:** THAT'S RIGHT.

**THE COURT:** MY JOB IS TO GIVE THE JURY INFORMATION TO THE EXTENT IT EXISTS.

SO THEY OBVIOUSLY HAVE THE... HOLD ON JUST A MINUTE.

(PAUSE IN THE PROCEEDINGS.)

THEY OBVIOUSLY HAVE ALL THE EVIDENCE, AND THERE IS AMBIGUITY. SO GIVEN THAT THERE IS AMBIGUITY, I'D RATHER NOT COMMENT ONE WAY OR THE OTHER, OTHER THAN TO SAY TO THEM THAT THERE IS NO EXHIBIT OR TESTIMONY OTHER THAN 599 THAT

1 REFERENCES THE HOUR AND A HALF SPECIFICALLY.

2 **MS. NUGENT:** I THINK THAT IS TRUE. I THINK THAT'S  
3 THE ONLY ONE.

4 **MR. LAFAYETTE:** THAT'S FINE, YOUR HONOR.

5 **THE COURT:** SO I'LL REPEAT WHAT I'M GOING TO SAY.

6 COURT RESPONSE: THERE IS NO EXHIBIT OR TESTIMONY OTHER  
7 THAN EXHIBIT 599 THAT REFERENCES THE HOUR AND A HALF  
8 SPECIFICALLY.

9 AGREED?

10 **MR. LAFAYETTE:** YES, YOUR HONOR.

11 **MS. NUGENT:** YES, YOUR HONOR.

12 (PAUSE IN THE PROCEEDINGS.)

13 **THE COURT:** IF YOU WILL MAKE A COPY OF THIS FOR  
14 EVERYBODY AND THEN TAKE THE ORIGINAL IN TO THE JURY.

15 OKAY. NOW THE 2:25 QUESTION.

16 (CLERK HANDS NOTE TO COURT.)

17 OKAY. THEY WOULD LIKE TO RECONVENE TOMORROW AT 8:30 A.M.

18 SO WE WILL HAVE A LITTLE BIT OF TIME.

19 HOLD ON JUST A MINUTE.

20 (PAUSE IN THE PROCEEDINGS.)

21 **THE COURT:** OKAY. SO IN TERMS OF THE 2:25, IS THERE  
22 ANOTHER EXHIBIT? THE QUESTION IS SPECIFICALLY, IS THERE AN  
23 EXHIBIT?

24 **MS. NUGENT:** NO. THERE'S THE PD LOG, EXHIBIT 26 HAS  
25 SOME REFERENCE TO THE NUMBER OF TARDIES, BUT OTHERWISE NO.

1 (DOCUMENT HANDED TO COUNSEL.)

2 THANK YOU.

3 **THE COURT:** DO YOU HAVE ONE FOR ME?

4 **THE CLERK:** I DO.

5 **THE COURT:** DO YOU AGREE, MR. LAFAYETTE, IS THERE AN  
6 EXHIBIT?

7 **MR. LAFAYETTE:** THERE IS, YOUR HONOR. I WOULD START  
8 WITH EXHIBIT 554.

9 **THE COURT:** HOLD ON.

10 (PAUSE IN THE PROCEEDINGS.)

11 **MR. LAFAYETTE:** SPECIFICALLY AT BATES PAGE 110, THIRD  
12 LINE DOWN.

13 **THE COURT:** RESPONSE.

14 **MS. NUGENT:** TWO OF THESE ARE ON THE PD LOG. THE  
15 7/22/16 WAS NOT DOCUMENTED IN THE END. IT WAS NOT PUT ON THE  
16 PD LOG AND THEY DID NOT CONSIDER IT A TARDY.

17 **THE COURT:** WELL, THE JURY CAN DECIDE THAT, CAN'T  
18 THEY?

19 **MS. NUGENT:** YES, BUT THEY ARE -- THE QUESTION ITSELF  
20 IS, IS THERE AN EXHIBIT THAT SHOWS THE THIRD DOCUMENTED TARDY.  
21 THEY ARE TALKING ABOUT THE PD LOG. THEY ARE TALKING ABOUT  
22 SOMETHING FORMAL. THAT IS NOT THIS.

23 **THE COURT:** I DON'T KNOW THAT. SO I CAN ASK THEM,  
24 ARE YOU TALKING ABOUT SOMETHING FORMAL OR JUST -- ARE YOU  
25 TALKING ABOUT FORMAL OR EMAILS?

1 IF THIS ISN'T SUFFICIENT FOR THEIR PURPOSES, IF THEY ARE  
2 LOOKING FOR SOME TIME CARD, LET'S SAY AS A FOR INSTANCE, AND I  
3 GIVE THEM THIS DOCUMENT, THEY CAN SAY THEY DON'T TRUST IT.  
4 RIGHT?

5 MS. NUGENT: THAT'S TRUE.

9                   **MR. LAFAYETTE:** YES, YOUR HONOR. THERE IS AT 563 ON  
10 THE FIRST PAGE OF 111, THE SECOND BULLET THERE'S A REFERENCE  
11 TO THREE DAYS.

14                           **MR. LAFAYETTE:** AND THEN THERE IS THE PAGE 113, WHICH  
15                           IS THE CHART -- I GUESS THIS IS THE WRONG ONE --

18 MR. LAFAYETTE: YES.

19 (PAUSE IN THE PROCEEDINGS.)

20 AND YOU, I THINK YOU WERE REFERENCING 566, YOUR HONOR --

22                           **MR. LAFAYETTE:** YES. AND BATES PAGE 1008. THAT'S  
23 THE SAME AS 574.

24 THE COURT: ALL RIGHT. THOSE ARE THE SAME CHARTS.

25 MR. LAFAYETTE: YES.

1                   **THE COURT:** AND THEN THE LAST ONE YOU MENTIONED IS  
2                   514.

3                   **MR. LAFAYETTE:** I DON'T THINK I REFERENCED -- OH, I  
4                   DID, YOUR HONOR, THE LAST ONE. AND IT'S -- THAT DOCUMENT, THE  
5                   SECOND EMAIL DOWN WHERE HE SIMPLY -- WHERE JEFF FISCHER WRITES  
6                   SHE IS BOUNCING AROUND 6:15 A.M. PLUS OR MINUS MARK DAILY.

7                   **THE COURT:** I AM NOT SURE THAT HELPS. I WOULD SAY NO  
8                   ON 514.

9                   **MR. LAFAYETTE:** OKAY.

10                  **THE COURT:** ALL RIGHT. SO TWO ARE THE SAME SET OF  
11                  EMAILS. THE OTHER TWO ARE THE CHART THAT PEREZ MADE.

12                  (PAUSE IN THE PROCEEDINGS.)

13                  WELL, IT LOOKS LIKE THEY ARE ASKING ABOUT THAT SPECIFIC  
14                  REFERENCE. SO IT SAYS WITH DOCUMENT -- THE QUESTION SAYS:

15                  "ALSO RELATES TO 9/21/16 EMAIL FROM LAYNE TO MARTINELLI.  
16                  DEFENSE NO. 599 UNDER ATTENDANCE. IT IS WRITTEN QUOTE,  
17                  "NEWTON" IN BRACKETS, "WAS DOCUMENTED AS BEING TARDY THREE  
18                  TIMES..." CLOSE QUOTE. NEWTON'S PD LOG, NO. 83, SHOWS TWO  
19                  ENTRIES RE TARDINESS.

20                  "QUESTION: IS THERE AN EXHIBIT IN EVIDENCE THAT  
21                  SHOWS THE THIRD DOCUMENTED TARDY?"

22                  WHEN YOU GO TO 599, THAT SENTENCE CONTINUES AS FOLLOWS:

23                  "SHE WAS" -- IT STARTS, "SHE WAS DOCUMENTED AS BEING TARDY  
24                  THREE TIMES AND FOLLOWING EACH, HAD AN EXPECTATION SETTING AND  
25                  COACHING DISCUSSION. CIARA CHALLENGED THAT OTHERS WERE TARDY

1 AND IT WASN'T BEING DOCUMENTED. WE PULLED GATE LOGS FOR THE  
2 NEW HIRES IN THE DEPARTMENT, FOUR INCLUDING HER, AND SHE WAS  
3 ACTUALLY TARDY SIX TIMES TOTAL. TWO OF THE OTHER NEW HIRES  
4 WERE NOT TARDY AT ALL, AND THE THIRD HAD ONLY ONE TARDY.  
5 THUS, IT WAS CONCLUDED THAT SHE WAS BEING TREATED FAIRLY." END  
6 OF PARAGRAPH.

7 SO IT SEEMS TO ME THAT THE REFERENCE THAT THEY ARE ASKING  
8 ABOUT IN THE SECOND SENTENCE, BEGINNING THAT SHE WAS  
9 DOCUMENTED, CONCERNS 554 AND 563. THE OTHER REFERENCES, WHICH  
10 THEY DO NOT ASK ABOUT IN THAT PARAGRAPH, RELATE TO 566 AND  
11 574, WHICH ARE THE CHARTS AND THE REVIEW DONE BY PEREZ, AND  
12 THEY DON'T ASK ABOUT THAT.

13 **MR. LAFAYETTE:** I AGREE.

14 **MS. NUGENT:** WELL, ONLY 563A IS IN. IT'S JUST THE  
15 FIRST PAGE. FIRST TWO PAGES.

16 **THE COURT:** JUST A MINUTE.

17 (PAUSE IN THE PROCEEDINGS.)

18 **MR. LAFAYETTE:** YOUR HONOR, MAY I SIT FOR A MINUTE?

19 **THE COURT:** YOU MAY.

20 (PAUSE IN THE PROCEEDINGS.)

21 **THE COURT:** OKAY. 563A HAS THE REFERENCE, AND THEN  
22 554 HAS THE REFERENCE AS WELL. I AGREE WITH YOU IT'S JUST A.

23 **MS. NUGENT:** SO THE REFERENCE ON 554 WE HAVE BEEN  
24 TALKING ABOUT IS PAGE 110 AND RIGHT --

25 **THE COURT:** SO ON 563A, THE REFERENCE IS ON PAGE 111

1 AND IT GOES OVER TO 112.

2 AND THEN 554, 110 IS THERE AS WELL.

3 **MS. NUGENT:** WE WOULD BE OKAY WITH HAVING 554, THE  
4 FOURTH PAGE, 110, AS A RESPONSE TO THE JURY ON THIS QUESTION.

5 **THE COURT:** ALL RIGHT. SO THE RESPONSE WAS, OR THE  
6 RESPONSE WOULD BE, I COULD JUST PUT COURT RESPONSE:  
7 EXHIBIT 554 AT 110 AND 563A AT 111 TO 112.

8 **MS. NUGENT:** I DON'T THINK THAT THE 563A IS NECESSARY  
9 BECAUSE THE REFERENCE IS THE EXACT SAME AS 554, 110.

10 **THE COURT:** WELL, BUT IT'S -- I DON'T KNOW HOW I  
11 DECIDE TO DO ONE AND NOT THE OTHER WHEN BOTH ARE THE SAME.

12 **MS. NUGENT:** WELL, BUT 563A HAS -- IT HAS A LOT MORE  
13 INFORMATION THAN JUST DOCUMENTING THE THIRD TARDY, THE THIRD  
14 DOCUMENTED TARDY.

15 **MR. LAFAYETTE:** THEY HAVE THE DOCUMENTS ALREADY.

16 **MS. NUGENT:** YEAH, I KNOW.

17 **MR. LAFAYETTE:** ALL WE ARE SAYING IS LOOK AT THE  
18 EXHIBIT.

19 **THE COURT:** OKAY. ANY OTHER COMMENTS?

20 **MR. LAFAYETTE:** NO, YOUR HONOR.

21 **MS. NUGENT:** NOT ON THOSE QUESTIONS, NO.

22 **THE COURT:** ALL RIGHT. I'M GOING TO REFERENCE THE  
23 TWO EXHIBITS.

24 IT WILL READ, COURT RESPONSE: EXHIBIT 554 AT DEF 000110,  
25 EXHIBIT 563A AT DEF 000111 TO 112.

1           OKAY. THEY HAVE LEFT FOR THE DAY SO WE WILL HAVE THIS FOR  
2           THEM IN THE MORNING.

3           ANYTHING ELSE FOR NOW?

4           **MS. NUGENT:** I NOTICED ON YOUR COURT CALENDAR FOR  
5           TOMORROW IT SAID COUNSEL TO APPEAR AT 8:00 A.M. IS THERE ANY  
6           REASON FOR THAT?

7           **THE COURT:** BECAUSE THAT'S WHAT WE ALWAYS --

8           **MS. NUGENT:** I DIDN'T SEE THAT TODAY.

9           **THE COURT:** NO. I DON'T EXPECT YOU HERE AT 8:00 A.M.  
10           TOMORROW. THE JURY, I THINK THEY ARE COMING IN, WE WILL GIVE  
11           YOU A COPY OF THIS, THEY WILL START AGAIN AT 8:30. SO, AGAIN,  
12           JUST BE AVAILABLE BEGINNING AT 8:30 TOMORROW MORNING. AND  
13           EVERYBODY DID SEE, RIGHT, THAT IT IS JUROR NO. 2 WHO IS THE  
14           FOREPERSON?

15           **MS. NUGENT:** YES, WE SAW THAT. THANK YOU.

16           **MR. LAFAYETTE:** YES.

17           **THE COURT:** ANYTHING ELSE?

18           **MS. NUGENT:** NO, YOUR HONOR.

19           **THE COURT:** ALL RIGHT. WE WILL STAND IN RECESS.

20           CONTACT YOU -- JUST BE AVAILABLE BY 8:30 TOMORROW.

21           **MR. LAFAYETTE:** THANK YOU.

22           **THE COURT:** IF YOU WANT TO WAIT AROUND, WE WILL GIVE  
23           YOU COPIES OF THESE.

24           **MR. LAFAYETTE:** I'LL WAIT.

25           (PROCEEDINGS CONCLUDED AT 4:25 P.M.)

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3 **CERTIFICATE OF REPORTER**

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I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE  
UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY  
CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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10 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

11 TUESDAY, DECEMBER 18, 2018

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